

self confidence, and who were unable to muster a party for themselves, was (e) to entreat a war chief to act for the plaintiff in the matter. The ték-niwap undertook to see the matter to its close, whatever the consequences, once he agreed to open proceedings on behalf of the aggrieved. An aberrant form of the same type which completely reversed the principle involved was (f) the sending of an old woman to "prosecute" in a situation where the aggrieved feared the defendant, hoping through presenting his cause pitifully to touch the compassion of the offender and so gain larger damages than he himself would dare demand.<sup>6</sup> 627<sup>x</sup>

The crux of the procedure was bargaining. There was no question of evidence—except in sorcery. In the damage-seeking cases the evidence was obtained before action was brought. In wife-absconding cases the presence of the woman with the absconder was *prima facie* evidence which need go no further. In all our cases but one the bargaining was begun with guilt accepted by both parties. In cases of adultery, beyond *in flagrante delicto*, evidence came from witnesses or by confession of the wife. However it may be, except for cases of sorcery, there was no technique for obtaining evidence from the defendant. Nor was the defendant usually confronted with witnesses. The aggrieved had to ascertain to his own satisfaction who the guilty party might be. After this had been done the defendant could then be confronted.

And what if guilt was denied? Usually it was not. When the defendant refused to own up, the procedure apparently came to an impasse. The aggrieved might be angry enough to take illegal steps (violence), or he might possibly kill some of the accused's horses to satisfy his desire for damages. The latter course would be likely to lead to retaliation, however, for the defendant, in denying guilt, denied cause for damages and such peremptory taking of damages was to him illegal. The reaction of the defendant if the first recourse were taken by his accuser is problematical; it would depend pretty much on his temperament and guilt in fact. Denial 627<sup>x</sup>  
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\* Case 7. Wife-Absconding: Husband sends old woman to collect

Informant: Rhoda Bluefoot

A woman deserted her husband by joining a raiding party led by a noted warrior, who took her as wife. On their return to the main camp her husband did nothing to get her back because he was afraid of the warrior and his three brothers. So he sent an old woman to plead for her. Since the warrior wished to keep her, he sent back a gift of horses and goods to the husband in place of the woman. 627<sup>x</sup>  
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This gift the husband had to accept, and he dropped proceedings.

Later the warrior was killed in a battle, and one of his younger brothers inherited the woman as wife. [587]

woman as wife.

x627  
[681] of guilt by an accused (except in sorcery) was so uncommon that there are not cases enough to draw sound conclusions.

Cases were opened with formal politeness and smooth words; the man who had come to prosecute addressed the one he was about to accuse as "brother." While the defendant listened, he was told why the accuser had come as prosecutor and informed what must be given in damages to satisfy his visitor. Inasmuch as the defendant usually knew what had called forth the visit, the prosecutor was not invited into the tipi to take the seat of the guest of honor opposite the door. Ordinarily the defendant was sitting beside the door of his tipi as the prosecuting party arrived, and the negotiations took place before the tipi.

The aggrieved usually stated his demand for damages specifically, but the damages rendered were those which the defendant agreed to give and the aggrieved was willing to accept. "Willingness," with either or both, could of course be anything but willing. There was no judge to determine what should be paid in composition for the wrong, nor was there any specific customary code regulating payments in accordance with degree of wrong. Consequently, only by agreement could the case be settled. Without the aid of an arbitrator, the sole way to agreement was bargain.

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517 The factors which operated in the process of settlement were manifold and delicate, each factor having many shades and facets. Who can say what the forces shaping the attitudes which determine the actions of any individual in any special circumstance may be? It is clear, however, that the will to push or resist was of greatest moment. Sometimes the defendant acquiesced only too willingly to the first demands made upon him. Sometimes the prosecutor placed a timid request for compensation, which he accepted with a sign of relief, glad that the thing was done. It is in this very will to push or to resist that the personal factor entered and resists reduction to written words. Nevertheless, personal courage and aggressiveness were the potent traits which counted in the Comanche male. Each party mentally weighed the other and decided accordingly, most of this being done before any action recounted in a story could occur. The one outstanding factor around which the settlement of a dispute turned was not the question of the right or wrong of the situation, but rather the relative bravery in warfare of the two parties involved. A reputation as a doughty slayer of enemies was a handy thing. The real point was that in Comanche law, as in all law, the ultimate power was resort to force. But

[608] <sup>7</sup> In Shoshone and Comanche theory, men who had shared a woman sexually were supposed to be brothers. For a discussion of the brother terminology and its relation to Shoshone-Comanche marriage practices, see E. A. Hoebel, *Comanche and Hlondike Shoshone Relationship Systems*, pp. 448-449.

across the face with his quirt. He'd never been whipped. He got to thinking 762 about it, so he got out his gun and shot himself. The people didn't know why he did it, and suggested things out of the way. Sometimes when Indians go on a raid they catch a disease and commit suicide because they don't want to go back that way. This man was a brave warrior; he had killed lots of enemies; he had power."

Among the Comanches a sense of the injustice of a formally justifiable 681 ● act at times took the form of a protest-suicide. Or perhaps it might be 762 released in some retaliatory act, such as killing a favorite horse or mutilating the good-looking sister of the man who had pushed the law too far. A boyhood prank of Gets To Be A Middle-Aged Man produced these double repercussions of incensed reactions to an over-strict legal settlement.

*Case 37. Adultery and Retaliation*

*Informant: Gets To Be A Middle-Aged Man*

"I was down by the creek one day with a friend when a woman came down for water. She was the sister of my friend's step-mother. I proposed that we seek intercourse with her. My friend agreed. So I went over to make the proposition to the woman. She was quite willing, provided that we would wait until she had taken the bucket of water back to camp. On her return I met her first, as I had demanded the first chance. While we were together there, her sister (my friend's step-mother) saw us, but she slipped quietly into the brush and said nothing. When my friend had his turn, his step-mother again spied and saw them together. She went right away to her sister's husband and informed him of his wife's doings with us. 684 882 689

"The man came to my father's tipi. He told him what had happened. 'What do you intend to do about it?' he asked my father.

"We were called in and he blamed us both with adultery. I denied any contact with the wife, but when my friend was charged he boasted, 'Sure I did it. It's an honor to be able to do such a thing as that.' The husband demanded damages, and when he received two good horses from my father, he departed satisfied.

"Then my elder brother came home from a raid and heard that two horses had been given because of our activity. He was angry. He took his bow and arrow and shot two horses dead in the herd of the woman's husband.

"Nothing further happened at that time. But then the younger brother of the husband came back from a raid and heard the story. He was angry that the two horses had been shot. Thinking that his older brother had been ill-treated all around, he went over and cut off the nose of my friend's beautiful sister."

The whole difficulty generated from the fact that the wrong-doers were youths. Adultery does give cause for suit for damages, but boys were always in a favored position and indulgence should have been shown them.

### The Comanches

177 He could run down and kill the buffalo on the open plains and  
231 afterwards carry it farther and save more of it than had been possible before.

It is difficult to overestimate the military value of the horse to the Comanche. It provided both the means and the incentive for more extended raids. Forays could be made more often and deeper into enemy territory, and the possibility of escaping safely with more plunder was greater with its use. It was primarily the horse that enabled the Comanches to extend their power southward, to beat the Spaniards and the Mexicans for more than a century, to make the Texas frontier unsafe for white settlement until they were restricted to a reservation, and to contend for a time successfully with the military forces of the United States from the Mexican border to north of the Arkansas River.

556 Horses constituted the most important type of property and the  
431 staple form of wealth. Because taking them under difficult conditions  
436 had a sociopsychological value, the acquisition of a large herd added greatly to the prestige of the owner. The owner of a large herd could make more munificent gifts to a prospective wife and members of her family and to other members of the tribe. Horses served also as an informal medium of exchange. They could be presented as gifts in reciprocity for services rendered and as fees to medicine men. When they were used in the settlement of controversies between individuals—as they generally were among the Comanches—they had legal as well as monetary significance.

231 Comanche esteem of horses knew no bounds. Each man had at least one favorite horse, although his personal string might run to dozens, or even hundreds, of animals. His favorite horse was kept picketed close to his tipi at night while the remuda grazed on the open plains. He tended it, petted it, and adored it. "Some men loved their horses more than they loved their wives," said Post Oak Jim. To this, others added, "Or child, or any other any human being." And in seeking legal settlements, whatever else the prosecuting man and his  
231 friends might demand of the offending culprit, they were sure to  
681 insist on the favorite horse.

In his own experience with a damage suit, Breaks Something had to deal with this problem.

### The Horse and the Buffalo

« « « I turned to those two men and asked what Mexican (a personal name) wanted in claim. 231  
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They answered that he wanted a certain horse I had got from a dead friend, another horse, a saddle, and a Winchester.

I told them I would not part with that first horse. It was dear to me. I told them I would give them another horse just as good.

Atsaci answered, "We want that horse or none."

I tried three times to try to get them to agree on another horse, but they refused. Finally, I told them, "All right, if you take that horse, you get nothing but that horse. It is enough." I had something else to say, too, and I told Atsaci I wanted to tell him something after we finished.

"What?" he said.

I told him not to forget that he was married to two of my "daughters" (they were daughters of my brother). In these words I spoke to him. "If I accept these terms, and you insist on that horse, you can have it. But if you do, you will lose your two wives. I will take my daughters back from you. You are my son-in-law, and yet you are not caring what you say; you are trying to get the horse I love." » » »

With that Breaks Something won his point.

Killing another man's favorite horse was akin to murder, and in two Comanche cases people were killed in revenge.<sup>4</sup> Favorite horses were emotional objects, like people. 231  
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Just how and when the Comanches first obtained horses is not known, but within a short time after they migrated to the South Plains they possessed them in great numbers, and, henceforth, a considerable portion of the male's working hours were spent astride a horse. The first modern horses on the plains were brought by Coronado and De Soto, but those escaping from these expeditions could not possibly have been the progenitors of all the herds of a later date.<sup>5</sup> The Spaniards of northern Mexico possessed a great many horses,

<sup>4</sup> Hoebel, *The Political Organization and Law-Ways of the Comanche Indians*, 68-70.

<sup>5</sup> For this point of view, see Francis Haines, "The Northward Spread of Horses among the Plains Indians," *American Anthropologist*, Vol. XL (1938), 429-30.

### The Comanches

684 walk. A cut nose was a social disgrace which was extremely difficult to live down. However, since these public marks had a tendency to decrease the value of a woman should the husband transfer her to another man, erring wives were not always disfigured. Nevertheless, Colonel Dodge reported seeing one Comanche woman with four separate gashes in her nasal organ,<sup>12</sup> while Kills Something claims to have known a woman with five. These were all legal penalties which it was the privilege-right of the husband to impose.

As for the offending male correspondent, in every case save four, he had, in conformity to law and custom, to pay damages to the husband. Comanche law required the aggrieved husband to prosecute. Public opinion forced him to, for if he held back, he would stand as a lily-livered coward before all The People. No man risked that. Thus, although the aggrieved husband was in fact prosecuting a wrong against himself, he was also put in a position of maintaining the public standards, whether he wanted to or not. He was in a sense a public prosecutor as well as the protector of his own private interests.

627 The payment of damages loomed so large in the interests of the  
● 681 Comanches that they coined a word for it—*nanewokə*. Such settlements were ideologically in sets of four different kinds of articles: horses, guns, blankets, and clothing. More often than not, they were paid only in horses, numbering from one to ten. Almost inevitably the demands of the husband, if he was a warrior of any consequence, included the favorite horse of the defendant as essential to his satisfaction. His personal prestige had been hurt by the affront, and it was his intent to re-establish it by forcing the aggressor into the humility of giving up that which was most dear to him. It was more than a "money" equivalent that was sought, for it was all part of a prestige battle.

627 In initiating the procedure, since there were no courts or assizes to be waited upon, action could be instituted at any time. The case was carried to the offender wherever he could be found. The aggrieved could prosecute by accosting the defendant himself, stating the offense and the amount of damages necessary to satisfy him; he might send a third party to prosecute for him; or he might send or accompany a group who stated the charges and then negotiated.

<sup>12</sup> R. I. Dodge, *The Plains of the Great West*, 304.

own men. It is safe to say that the wild Comanches never kept a<sup>619</sup> treaty and in the matter of treaty breaking some excellent ex-<sup>648</sup>amples were set by their white neighbors.<sup>13</sup>

The records available—and they are exceedingly scant and un-<sup>622</sup>satisfactory—indicate that the political institutions of the Comanches<sup>631</sup> were meager and poorly defined. Each band had a head civil chief and a head war chief, selected by the council of chiefs and leading men. In this connection I may state that I have never seen any satisfactory account of the manner in which chiefs were selected, or any definition of just what constituted a chief. It appears that heredity was one consideration but not the only matter of determining the status of a man in the tribe. Absolutism and the idea of divine right found little consideration in a Comanche camp. The chief or head man who proved tactless, cowardly, or inefficient would soon be supplanted; but this readjustment would likely take place gradually and by common consent rather than by formal procedure.

In all matters, even war, the head civil chief was superior to his war<sup>622</sup> chief, but if the civil chief was aged and decrepit and the war<sup>624</sup> chief vigorous and popular this civil superiority would be more theoretical than real. Verily, among the Comanches the man made the office and not the office the man. However, the war chief was apt to be the son, natural or adopted, of the head civil chief; and the most insolent Comanche brave had respect for the council of his elders.<sup>14</sup>

In theory, at least, the council was supreme, but its decisions<sup>623</sup> were often indefinite and left each chief or head man a large measure of freedom of action. Generally the majority made little effort to impose its will on the minority.

During the later period, custom and the consensus of opinion,<sup>622</sup> public opinion, we might call it, were practically the only sanctions<sup>[68]</sup> behind Comanche law. However, it is likely that before the tribe

13. The Spaniards often commented on the difficulty of holding the Comanches to treaties. See The Baron de Ripperda to the Viceroy, August 25, 1772, in Bolton's *De Mezieres*, as cited, I, 342. The Anglo-Americans found that this problem increased with the passing of the years.

14. These statements represent my own opinions based on extensive reading and study in both Spanish and English sources. The tribal practices in these matters varied if we are to reconcile the different conflicting accounts. Josiah Gregg gives the matter some consideration. See *Commerce of the Prairies* (New York, 1845), 306-307, in R. G. Thwaites's *Early Western Travels*, XX, 342-343.